

General Information Letter: Illinois income tax is not required to be withheld from retirement income exempt from Illinois taxation, but may be withheld at the request of the recipient. No information return filing is required.

May 18, 2000

Dear:

This is in response to your letter dated April 11, 2000, in which you request a letter ruling. The nature of your letter and the information provided require that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be viewed on our website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

Your letter states as follows:

This letter serves as written documentation to solicit State confirmation regarding specific requirements to withhold taxes on distributions from qualified retirement plans and to file Form 1099-R information with the State.

Specifically, please review the attached documentation which serves as our interpretation of the state regulations governing qualified plan distributions. If you agree with this information, please indicate your agreement by signing in the space provided below. If you disagree, please provide state guidance for withholding from both periodic and nonperiodic payments, including details as to the calculation of state withholding tax and/or provide Form 1099-R filing requirements; i.e., magnetic media, paper.

#### I. REQUIREMENTS:

Illinois tax is voluntary. It is not based upon the Federal Tax Withholding election. The participant must request Illinois tax to be withheld. If no such election is made, then Illinois tax will not be withheld.

#### II. WITHHOLDING METHOD:

The amount of Illinois tax that is withheld is based upon the Illinois Tax Tables.

##### A. PRETAX DEDUCTIONS:

Exemption amount: \$2,000.00 × Number of Exemptions

Marital Status & Exemption Defaults: If the participant fails to file a withholding certificate, withholding is calculated as if the participant claimed 0 exemptions.

##### B. WITHHOLDING TABLE:

LOW RANGE	HIGH RANGE	TAX RATE	PREVIOUS TAX
Zero	Up	3%	Zero

### III. FORM 1099-R FILING REQUIREMENTS:

Illinois does not require Forms 1099-R to be filed with the state. A filer must maintain Forms 1099-R records for a three year period and provide them if requested.

### IV. WITHHOLDING OPTIONS:

Will withhold Illinois state taxes according to how the Participant Header Record is set up.

Will withhold Illinois state taxes.

Will not withhold Illinois state taxes.

Will not withhold Illinois state taxes.

Will not withhold Illinois state taxes.

## RULING

With respect to your **I.** above, Illinois income tax withholding generally is not voluntary. Section 701 of the Illinois Income Tax Act ("the IITA"; 35 ILCS 5/101 et seq.) states in part as follows:

#### Sec. 701 Requirement and Amount of Withholding

(a) In General. Every employer maintaining an office or transacting business within this State and required under the provisions of the Internal Revenue Code to withhold tax on (1) compensation paid in this State ...; or (2) payments described in subsection (b) shall deduct and withhold [Illinois income tax].

(b) Payments to Residents. Any payment (including compensation) to a resident by a payor maintaining an office or transacting business within this State and on which withholding of tax is required under the provisions of the Internal Revenue Code shall be deemed to be compensation paid in this State by an employer to an employee for purposes of [income tax withholding].

Despite section 701, Illinois income tax regulations section 100.7030(c) states:

Withholding will not be required under this section on any payment to the extent such payment is not includable in the recipient's base income.

In general, the base income of an individual is equal to his federal adjusted gross income (AGI), but modified by certain statutorily prescribed addition and subtraction provisions. (See IITA §203(a)). IITA section 203(a)(2)(F) provides the following subtraction modification.

An amount equal to all amounts included in [federal AGI] pursuant to the provisions of Sections 402(a), 402(c), 403(a), 403(b), 406(a), 407(a), and 408 of the Internal Revenue Code, or included in [federal AGI] as distributions under the provisions of any retirement or disability plan for employees of any governmental agency or unit, or retirement payments to retired partners, which payments are excluded in computing net earnings from

self employment by Section 1402 of the Internal Revenue Code and regulations adopted pursuant thereto.

Applying the foregoing, then, to the extent that distributions from qualified retirement plans are subtracted from federal AGI in the computation of base income, Illinois income tax withholding is not required. On the other hand, to the extent that such distributions are included in federal AGI and not subtracted in the determination of base income, Illinois income tax must be withheld as required by IITA section 701.

Illinois law also allows for a payor and payee to enter a voluntary withholding agreement. For example, an individual expecting Illinois source income not subject to withholding may wish to have additional amounts withheld from other Illinois income items subject to withholding. In such cases, Illinois income tax regulations section 100.7070 provides:

Any individual receiving periodic payments may enter into an agreement with the payor to provide for withholding of Illinois income tax on such payments. An agreement under this section between the payor and the individual shall be in writing and shall be governed by the provisions of paragraph (b) of 86 Ill. Adm. Code 100.7060. The amount of tax to be deducted and withheld from each payment shall be equal to an amount mutually agreed upon in the written agreement ... and shall be considered as a tax withheld from compensation for purposes of ... the Illinois Income Tax Act. A payor who has entered into an agreement under this section shall be considered an employer required to deduct and withhold tax ... and shall accordingly be required to register as a withholding agent and file the reports and returns required of all employers withholding tax.

With respect to your **II.** above, the methods of computation of Illinois income tax withholding have been set forth at Illinois income tax regulations section 100.7050(b). Section 100.7050(b)(3) states that an employer may elect to use the withholding tables established by the Department. But other methods of computation may be applied. (See 86 Ill. Adm. Code 100.7050(b)).

IITA section 702 allows the taxpayer a withholding exemption in an amount equal to the "basic amount" as provided by IITA section 204(b) for each personal or dependency exemption that may be claimed on the federal income tax return under Internal Revenue Code section 151. For taxable years ending on or after December 31, 2000, the basic amount under IITA section 204(b) is \$2,000.

Section 702 of the IITA requires an employee to furnish his employer the information necessary for the employer to make an accurate withholding of Illinois income tax. The Department furnishes Form IL-W-4, Employee's Illinois Withholding Allowance Certificate, for this purpose. If an employee fails or refuses to furnish such information, IITA section 702 requires that the employer withhold the full rate of tax from the employee's total compensation.

Regarding your **III.** above, Illinois does not require Form 1099-R to be filed with the taxpayer's return. However, a taxpayer claiming a subtraction modification for distributions from a qualified retirement plan must furnish with the Illinois return a copy of page 1 of the U.S. Form 1040.

Section 501 of the IITA, regarding books and records required to be maintained, provides as follows.

Every person liable for any tax imposed by this Act shall keep such records, render such statements, make such returns and notices, and comply with such rules and regulations as the Department may from time to time prescribe. Whenever in the judgment of the Director it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns and notices, render such statements, or keep such records, as the Director deems sufficient to show whether or not such person is liable for tax under this Act.

Illinois does not mandate any particular records be kept for any certain period of time. Nonetheless, as indicated by section 501, taxpayers are required to keep such records for such duration as sufficient to show whether any Illinois income tax liability exists.

As regards your **IV.** above, please see Subpart Q of the Illinois income tax regulations relating to income tax withholding (86 Ill. Adm. Code 100.7000 *et seq.*), and Form IL-W-4, Employee's Illinois Withholding Allowance Certificate.

As stated above, this is a GIL. Accordingly, it does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and wish to obtain a binding private letter ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of 86 Ill. Adm. Code 1200.110(b).

I hope this information is helpful. If you have further questions concerning this GIL you may contact me at (217) 782-7055. If you have further questions related to the Illinois income tax laws, visit our website at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Brian L. Stocker  
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